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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BOBBY GOSSAI,

Plaintiff and Appellant,

v.

RAY GOLBARI, et al.,

Defendants and Respondents.

B289494

(Los Angeles County
Super. Ct. No. YC071918)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Ramona G. See, Judge. Reversed.

Bobby Gossai, in pro. per., for Plaintiff and Appellant.
Law Offices of Saul Reiss, Saul Reiss, and Fay Pugh for
Defendants and Respondents.

Plaintiff and appellant Bobby Gossai worked on behalf of defendant and respondent Ray Golbari and two companies Golbari controlled¹ in purchasing a parcel of real estate. As payment for Gossai's services, Golbari assigned to Gossai two debts or accounts receivable owed to Golbari. Gossai filed suit against Golbari, alleging that Golbari failed to provide documentation Gossai needed to collect the debts. The trial court sustained Golbari's demurrer with leave to amend on two occasions because Gossai claimed to have acted as a real estate broker but failed to allege that he held a real estate license or that he was exempt from the licensing requirement. The court sustained a third demurrer without leave to amend and dismissed the case on the ground that Gossai's second amended complaint contradicted claims Gossai made in his prior complaints and was therefore a sham pleading. We agree with Gossai's contention that his second amended complaint was not a sham pleading, and on that basis, we reverse.

FACTS AND PROCEEDINGS BELOW

On March 8, 2017, Gossai filed a complaint against Golbari alleging that Golbari had failed to pay him for services Gossai rendered in "negotiat[ing] a real estate deal worth \$1.4 million for" Golbari. According to the complaint, the real estate deal closed in June 2013, and as compensation for Gossai's services, Golbari assigned to Gossai the right to collect two debts or accounts receivable owed to Golbari. One of the debtors denied the debt, and when Gossai requested that Golbari send documentation to support his right to collect, Golbari failed to do so. Gossai filed suit against the second debtor, who claimed that it did not do business in California and sought to dismiss Gossai's complaint for lack of jurisdiction. Golbari failed to send

¹ For the sake of convenience, we refer to Ray Golbari and the companies he controlled collectively as Golbari.

documents Gossai requested to prove that the debtor was connected to a California business. On the basis of these claims, Gossai alleged causes of action for breach of contract, intentional and negligent misrepresentation, fraud, and quantum meruit, among others.

Golbari filed a demurrer on the ground that the facts alleged in Gossai's complaint showed that he had acted as a real estate agent or broker on behalf of Golbari, but did not allege that he was licensed to act in that capacity. Under Business and Professions Code section 10136,² anyone "engaged in the business or acting in the capacity of a real estate broker or a real estate salesperson" who wishes to bring a suit "for the collection of compensation for the performance of any of the acts" within the scope of the code's regulations regarding real estate matters must "alleg[e] and prov[e] that he or she was a duly licensed real estate broker or real estate salesperson at the time the alleged cause of action arose." The license requirement applies to anyone who "negotiates the purchase, sale, or exchange of real property" in expectation of compensation (§ 10131, subd. (a)) unless an exemption applies. (See § 10133.) The trial court found that Gossai's complaint was insufficient because he did not allege that he held a real estate license, and sustained the demurrer with leave to amend.

Gossai filed a first amended complaint alleging the same causes of action as the original complaint. In the amended complaint, Gossai claimed that he was exempt from the real estate broker licensing requirement because he held "a duly executed power of attorney from the owner of the real property with respect to which the acts are performed." (§ 10133, subd. (a)(2).)

² Unless otherwise specified, subsequent statutory references are to the Business and Professions Code.

Golbari filed a second demurrer, contending that the exemption under section 10133, subdivision (a)(2) did not apply to Gossai because he did not represent “the owner of the real property” in the transaction, but rather acted on behalf of Golbari as buyer. The trial court again sustained the demurrer with leave to amend, noting that it was not clear from the text of the first amended complaint whether Gossai purported to represent Golbari as the buyer or seller of the property.

Gossai filed the operative second amended complaint alleging that he was not subject to the licensing requirement because he performed “purely internal administrative work” on behalf of Golbari. He claimed that his duties for Golbari were limited to researching properties and submitting recommendations to the Golbari board. Gossai also attached a copy of a contract in which Gossai agreed to perform administrative and clerical work in exchange for a payment of 11 percent of the market value of any property Golbari purchased.

Golbari again filed a demurrer, as well as a motion to strike the second amended complaint. He argued that the new complaint was a sham pleading because it contradicted or discarded factual allegations Gossai made in his previous complaints. The trial court sustained the demurrer without leave to amend and denied the motion to strike as moot.

DISCUSSION

Gossai contends that the trial court erred by sustaining Golbari's demurrer to the second amended complaint on the ground that it was a sham pleading. He argues, and we agree, that he provided a plausible explanation for the apparent inconsistencies between the complaints. On this basis, we reverse.³

³ Because we agree with Gossai that the complaint was not a sham pleading, we need not address Gossai's claims that Golbari's partial performance under the contract forfeited any right to challenge the validity of the contract, or that Gossai is entitled under the doctrine of severability to collect compensation for work not requiring a real estate license even if the contract also called on him to perform work as a real estate broker. Gossai also contends that the trial court erred by sustaining Golbari's demurrers with respect to his first two complaints, but he forfeited this argument by filing the second amended complaint. (See *Sheehy v. Roman Catholic Archbishop* (1942) 49 Cal.App.2d 537, 540 ["when a party does not leave his pleading where the order sustaining the demurrer has left it, he waives any error on the part of the trial court in sustaining the demurrer"].)

Golbari contends that we should strike Gossai's opening brief or disregard all of its factual and procedural assertions because Gossai failed to comply with rules of court requiring him to "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(C).) We decline to do so. Gossai did not cite to page numbers in the clerk's transcript, but he cited the sources of his claims sufficiently to allow this court to identify and verify them without undue difficulty. Although we caution Gossai that courts in future proceedings may not be as lenient as we are today, it would not be in the interests of judicial efficiency to require Gossai to file new briefs with correct citations.

We review a trial court's decision sustaining a demurrer de novo. (*Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 637.) That is, we independently "determine whether the complaint states facts sufficient to constitute a cause of action." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) In making this determination, "[w]e treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Ibid.*)

The trial court sustained Golbari's demurrer to the second amended complaint on the ground that it was a sham pleading. The sham pleading doctrine bars plaintiffs "from amending complaints to omit harmful allegations, without explanation, from previous complaints to avoid attacks raised in demurrers or motions for summary judgment." (*Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 425.) Under this doctrine, "[i]f a party files an amended complaint and attempts to avoid the defects of the original complaint by either omitting facts which made the previous complaint defective or by adding facts inconsistent with those of previous pleadings, the court may take judicial notice of prior pleadings and may disregard any inconsistent allegations." (*Colapinto v. County of Riverside* (1991) 230 Cal.App.3d 147, 151.) "The purpose of the doctrine is to enable the courts to prevent an abuse of process. [Citation.] The doctrine is not intended to prevent honest complainants from correcting erroneous allegations or to prevent the correction of ambiguous facts." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 751.) "Plaintiffs . . . may avoid the effect of the sham pleading doctrine by alleging an explanation for the conflicts between the pleadings." (*Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 344.)

The trial court concluded that Gossai's second amended complaint alleged facts inconsistent with those in the prior two complaints. In his initial complaint, Gossai alleged that he agreed "to negotiate a real estate deal worth \$1.4 million for"

Golbari, and that he indeed “did negotiate the real estate deal for [Golbari] saving [Golbari] \$500,000.00, from the original price of \$1.4 million.” In his first amended complaint, Gossai repeated these same allegations, adding that he performed these actions pursuant to an agreement in which Golbari appointed him attorney-in-fact. The agreement gave Gossai “authority . . . to represent [Golbari] in all aspect(s) or transaction(s)” legally allowed to an attorney in fact, including to be “involve[d] in all private and public negotiation[s and] . . . real estate transaction[s, and to] sign and execute all necessary document(s) whenever and wherever it is necessary.” In neither of his first two complaints did Gossai describe any other services he performed for Golbari in exchange for the payments he claimed Golbari owed him.

In his second amended complaint, Gossai claimed that he performed “purely internal administrative work” for Golbari. According to the new complaint, Gossai attended Golbari board meetings three times per week, visited properties Golbari was contemplating buying to investigate them, and reported back to the board with his recommendations. With respect to the property at issue in the complaint, Gossai claimed he researched the property and proposed that Golbari offer the seller \$900,000. Ray Golbari himself proposed offering \$950,000, and another individual proposed \$980,000. According to Gossai, the board unanimously voted for Gossai’s proposal, and the seller accepted the offer soon afterward. In support of his allegations, Gossai attached a contract in which he agreed “to do certain administration, clerical work and/or act as [Golbari]’s [g]ranttee in certain transaction(s).” In exchange, Golbari agreed that “[i]n the event where [Gossai] is involved in acquiring property(ies) real, personal, chattel etc. for [Golbari], [Golbari] will pay [Gossai] 11% of the value base[d] upon the current market value at the time of acquisition.”

The purpose of the new allegations is clear enough: If Gossai performed only internal work on behalf of Golbari, he would not fall within the statutory definition of a real estate broker (see § 10131), and accordingly, he would not be required to hold a real estate license in order to bring a suit for compensation. (See § 10136.) Nevertheless, the sham pleading doctrine applies only if Gossai failed to “offer[] a plausible explanation for” the inconsistencies in the complaints. (*Deveny v. Entropin, Inc., supra*, 139 Cal.App.4th at p. 426.) Gossai claimed that, in using the word “negotiate” in the previous complaints, he did not intend to refer to conversations with the seller regarding the purchase price. Instead, he used the term “in the context of competing investors operating out of the [same] office and not with the seller.”

We agree with Gossai that his explanation was sufficiently plausible to avoid the application of the sham pleading doctrine. Gossai’s explanation of his use of the term “negotiate,” to describe the process of arguing internally for a proposal to present to the seller of a property, was idiosyncratic and different from the way the word is ordinarily used, but that does not mean that he was insincere in claiming he used the word this way. He did not describe in the original or first amended complaint the nature of the negotiations, nor did he claim that he dealt with the seller of the property. Furthermore, the contract Gossai and Golbari signed, which Gossai included as an exhibit to his second amended complaint, does not state that Gossai would perform any work requiring a real estate license. This is a close question, but ultimately, the apparent inconsistencies in Gossai’s complaints do not rise to the level of a sham pleading. That doctrine “is reserved . . . for the extreme case, and it may not be indiscriminately applied; it ‘must be taken together with its purpose, which is to prevent amended pleading which is only a sham, when it is apparent that no cause of action can be stated truthfully.’” (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 144.)

Gossai's pleadings are oddly worded and difficult to understand, but his explanation and supporting documents suggest confusion rather than an attempt to abuse court process.

This conclusion requires us to reverse the trial court and reinstate Gossai's second amended complaint. In support of his last demurrer, Golbari alleged that there are additional defects in Gossai's complaint. The trial court did not rule on those arguments, but it should do so upon remand.

DISPOSITION

The judgment is reversed. Appellant is awarded his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.